

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 9, 2009**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Charles Lapp, Mike Mower, Jeff Larsen, Jim Heim, Marc Pitman and Randy Toavs. Frank DeKort and Gordon Cross had excused absences. Dianna Broadie, Alex Hogle and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 8 people in the audience.

**APPROVAL OF
MINUTES**

Heim made a motion seconded by Hickey Au-Claire to approve the October 14, 2009, October 21, 2009 and November 4, 2009 minutes.

The motion passed unanimously.

**PUBLIC
COMMENT
(not related to
agenda items)**

None.

**EVANS
SUBDIVISION
(FPP 09-06)**

A request by Thomas & Julie Evans for Preliminary Plat approval of Evans Subdivision; a two (2) lot single-family residential subdivision on 3.55 acres. Lots in the subdivision are proposed to have shared water and individual septic systems. The property is located at 735 Yoeman Hall Road.

STAFF REPORT

Dianna Broadie reviewed Staff Report FPP 09-06 for the Board.

**BOARD
QUESTIONS**

Lapp asked if the pipe easement mentioned in the report was different than what was shown on the map.

Broadie said the pipe easement was a drain field. She elaborated on her visual aid map.

The board and Broadie discussed the shared well, what other processes needed to be done to have water rights, whether or not there was enough water to have a shared well and drain fields.

Larsen asked if there was normally a condition for a variance for the commissioners.

Broadie said she had seen variances presented with a condition and without it.

Lapp asked about the phrase 'native growth easement' and what it meant.

Broadie said they would not take the native growth and remove it. It would remain where it was.

The board and Broadie discussed other possibilities for a definition for 'native growth easement' and what exactly it meant.

Hickey Au-Claire asked if this application was called a minor subsequent.

Broadie said it was a subsequent minor because it had been both family transferred and subdivided before.

Toavs asked Broadie to find a comparable definition in the subdivision regulations.

Mower asked for clarification on the MDEQ recommendation.

APPLICANT PRESENTATION

Narda Wilson, North Star Land Use, represented the applicant. She explained where the property was and the specifics of the property, what the owners planned to do with the property, access to the property, drain field easements, riparian protection zones, groundwater locations and agreed that they may need another definition for native growth easement, but were okay with the report. They had no objections to the conditions. She wanted Dick Smith, the surveyor, to explain the location of the replacement drain field. She addressed Pitman's concern about water rights and passed a water right update to the board.

Pitman and the applicants discussed the update and procedures to have proper water rights.

Dick Smith, 58 West View Drive, Smith Surveying, explained the easements on the visual aid map.

BOARD QUESTIONS

The board, applicant and staff discussed road easements and options for road easements at length.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

Tom Evans, 735 Yoeman Hall Rd, owner of the property wanted the board to know they had been good stewards of the property and gave examples of what they had done to the property so far.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Broadie discussed the ramifications of making a condition which made the applicant change their current easement which affected another owner involved in the use of the easement.

**MAIN MOTION
TO ADOPT
F.O.F.**

Pitman made a motion seconded by Larsen to adopt staff report FPP 09-06 as findings-of-fact.

**SECONDARY
MOTION TO
(Add F.O.F. #13)**

Heim moved and Pitman seconded to add finding-of-fact #13 to read: Finding #13 – There is an existing pipeline easement for a replacement drain field that is located in the public road right-of-way easement.

**ROLL CALL TO
(Add F.O.F #13)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Mower asked if they should condition the well or add the fact there were traces of arsenic found in the water.

Pitman said the well was fine. The well was not a public water supply so they did not need to add a finding-of-fact which concerned the arsenic.

Lapp asked for clarification on what the new finding-of-fact said and how it related to finding-of-fact #12.

**ROLL CALL TO
ADOPT F.O.F.**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
FPP 09-06**

Pitman made a motion seconded by Larsen to adopt Staff Report FPP 09-06 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

Mower said he hoped all the owners of the lots got along because of all the shared easements and wells.

Lapp wanted to point out staff reports already made references to the draft transportation plan. He asked about pulling the weeds in the protected area and if it was a condition.

Broadie said it was what the applicants chose to submit as their riparian plan. They could use other means to take care of noxious weeds.

Lapp said it did not say they could never spray in that area.

Broadie said that was not the way it was written.

Toavs asked if Broadie had come up with a better term than native growth protection zone.

Broadie said if they wanted to use 'riparian protection zone', that was fine with her.

**SECONDARY
MOTION TO
(Amend
CONDITION #16
& 17)**

Lapp made a motion and Hickey-AuClaire seconded in condition #16 and #17, the native growth protection zone be referred to as riparian protection easement.

MOTION WITHDRAWN

**BOARD
DISCUSSION**

Grieve recommended they follow what was in the regulations which talked about the existence of a riparian protection zone. He read from the regulations what that entailed.

The board and staff discussed options on the motion.

Lapp withdrew his motion.

Wilson offered alternative language for a motion.

**SECONDARY
MOTION
(Amend
CONDITION #16
and #17)**

Toavs motioned and Larsen seconded to amend condition #16 and #17 to replace "Native Growth Protection Easement" with "Riparian Protection Zone".

ROLL CALL TO

On a roll call vote, the motion passed unanimously.

*(Amend
CONDITION #16
and #17)*

**BOARD
DISCUSSION**

The board and staff discussed the best option for access to the property to preserve the over 100 year old trees.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
FPP 09-06**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Board took a 5 minute break.

**GLACIER HILLS
#4
SUBDIVISION
(FPP 09-03)**

A request by Spoklie & Hoover III for Preliminary Plat approval of Glacier Hills #4; a six (6) lot single-family residential subdivision on 30.51 acres. Lots in the subdivision are proposed to have public water and individual septic systems. Primary ingress/egress of the proposed subdivision is Glacier Hills Drive West via 5th Street in Martin City, and secondary emergency egress is via a gated private road approaching onto US Hwy 2. The application includes a variance request regarding slope and maximum centerline radius of the secondary emergency egress.

STAFF REPORT

Alex Hogle reviewed FPP 09-03 for the board.

**BOARD
QUESTIONS**

Jeff Larsen did not verbally recuse himself from discussion or deliberation, but stepped down from his planning board seat for this application during the break.

The board and Hogle discussed what the water source for the development was, whether they had water rights, and the boundaries of the water district.

**APPLICANT
PRESENTATION**

Eric Mulcahy, Sands Surveying, represented the applicant. For the most part, they did not have a problem with the conditions. He clarified where the boundaries of the water district were. He talked about high groundwater and the SWIP storm water prevention plan from Montana DEQ. They would like to see approval of the variance for the emergency egress. He asked that the road be considered a private road since it was considered private in the other phases. He spoke about the specifics of the road.

BOARD

Mower asked for clarification on the private versus public road

QUESTIONS

issue.

Mulcahy said in Flathead county any subdivision which came into the county would be privately maintained, and privately owned, however, there was a provision that said the road was open to the public. Plats 1, 2 and 3 came in before the new subdivision standards, so this was not an issue before. They would like to continue to follow the prescription that they had been working with all through the project. He said maintenance for the road with the CCRs were the same as they had been for the other three phases.

The board and Mulcahy discussed the private versus public road, a gate at the main entrance and gated versus non gated communities.

**AGENCY
COMMENTS**

None.

**PUBLIC
COMMENT**

None.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

Hogle said Grieve had obtained a copy of the 1984 subdivision regulations which also discussed private and public roads and said that new roads should be public easements unless the commission approved them to be private. The concept of public was not brand new in the regulations. There had been leeway in the past. Page eight of the staff report detailed the specifics of that discussion. He gave examples from the subdivision regulations of contradictions which concerned roads.

Toavs asked why Hogle was set on the road being public.

Hogle said there were requirements in the MCA review guidelines and the formatting of the staff reports were fashioned after those guidelines. He pointed out where those were located. He did not want to be negligent through omission. It was his obligation as staff working for the public to pay attention to the regulations and deal with them. He acknowledged there was sometimes awkward situations which was what this was. In order to comply, he recommended saying on the plat '60' public access and utility easement'.

**BOARD
DISCUSSION**

Hogle, Grieve and the board discussed at length the options of having the road public or private, gated communities, subdivision regulations, access of public land through private roads, and the emergency egress of the application.

Mulcahy said if the board wanted to defer to the commissioners on whether the road should be private or public, that was fine with them.

The board and staff discussed Mulcahy's comment.

Hickey-AuClaire asked why the applicant did not have to pay cash-in-lieu on all the lots.

Hogle explained the standards for park land.

**MAIN MOTION
TO ADOPT
F.O.F.**

Pitman made a motion seconded by Larsen to adopt staff report FPP 09-03 as findings-of-fact.

**BOARD
DISCUSSION**

Mower asked if there was a finding of fact concerning the fact lot 6 may or may not be supplied by the Martin City water system.

Hogle said there was not. He noted it looked odd, but did not want to hang his hat on a picture.

**ROLL CALL TO
ADOPT F.O.F.**

On a roll call vote, the motion passed unanimously.

**MOTION TO
RECOMMEND
APPROVAL**

Pitman made a motion seconded by Hickey-AuClaire to adopt Staff Report FPP 09-03 and recommend approval to the Board of County Commissioners.

**BOARD
DISCUSSION**

The board, Hogle and Grieve discussed the wording on condition #23 and #19, private roads, gates, subdivision regulations and public and private land. They also discussed people who had purchased land with expectations and sold it back when the expectations were not met.

**MOTION TO
(Amend
CONDITION #19)**

Hickey-AuClaire motioned and Pitman seconded to amend condition #19 by adding language '*within the boundaries of Glacier Hills #4*' to the sentence to state: 19. Glacier Hills Drive West *within the boundaries of Glacier Hills #4* shall be identified as a '60 foot public road and utility easement' on the final plat.

**BOARD
DISCUSSION**

Mower, Hogle, Spoklie and the board discussed how the amended condition may conflict with other conditions, Hogle's intent with the conditions, alternate wording, and the road user's agreement.

**MOTION TO
(Amend
CONDITION #23)**

Heim motioned and Pitman seconded to amend condition #23 by deleting language 'to 1) declare Glacier Hills Drive West as 'public' and 2)' to read: 23. Maintenance of the emergency egress and the portion of Glacier Hills Drive West within Glacier Hills #4 shall be addressed through a Road User's Agreement compliant with FCSR 4.7.17(e) and Appendix K **or** the CC&R's for Glacier Hills shall be amended ~~to 1) declare Glacier Hills Drive West as 'public' and 2)~~ to expand the maintenance provision to include appropriate specifications regarding routine maintenance items and major improvement items in compliance with FCSR 4.7.17(e) and Appendix K.

**ROLL CALL TO
(Amend
CONDITION #23)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Mower asked why condition #22 was in the report.

Hogle said it had bearing on the review criteria for public health and safety as well as the review criteria for impact on local services. The fire chief had submitted a letter which concerned the safety of the egress with the potential of a gate to the road.

The board, Hogle, Grieve and Mulcahy discussed at length physical access to the subdivision and what was required for safety requirements, whether or not the condition padded the recommendation and the authority of the board concerning the gate.

Hickey-AuClaire thought conditions #24 and #25 were repetitive and thought #24 could be struck.

**MOTION TO
(Strike
CONDITION #24)**

Pitman moved and Hickey-AuClaire seconded to remove condition #24 due to redundancy.

**BOARD
DISCUSSION**

The board, Hogle, Spoklie and Grieve discussed if contract hauling needed to be on the final plat, contract hauling and who

provided it in the area of the application.

**ROLL CALL TO
(Strike
CONDITION #24)**

On a roll call vote, the motion passed unanimously.

**BOARD
DISCUSSION**

Mower asked if the commissioners understood the tenor of what was discussed in the planning board meetings. He knew they read the minutes, but did they understand the nature of what the discussion was. The only real discussion so far was private versus public roads. He asked if Hogle gave that information to the commissioners when he gave his presentation.

Hogle said staff did prepare an addendum to the staff report. He explained what went into the addendum.

Mower said that Hogle would bring up the issue that the subdivision regulations were in conflict on this one point. (public vs. private roads)

Donna Valade, board secretary said the commissioners received a DVD copy of the meeting.

The board asked if the commissioners viewed the DVD.

Grieve said the planning office received regular calls from the commissioners asking questions after they had viewed the DVD.

**ROLL CALL
TO
RECOMMEND
APPROVAL OF
FPP 09-03**

On a roll call vote the motion passed unanimously.

**MICHAEL
BARRY
(FLV 09-01)**

Withdrawn.

**COMMITTEE
REPORTS**

Jeff Larsen resumed his seat at the table for the rest of the meeting.

Toavs said Committee A had met, made some recommendations of what they planned to do, he resigned as the chairperson and Hickey-AuClaire was appointed the new chairperson.

Hickey-AuClaire said they felt they needed to reorganize the committees to get a fresh start. She felt the maps were important for many reasons. One of the reasons was the fact the growth policy was coming up for review. It would not hurt to get a jump start on things. Gravel resources were an issue that would need to be tackled. She passed out an agenda which had been drawn up to the rest of the board. The agenda concerned maps which had been updated, ones they would like to update and things they needed more information on.

The board discussed and clarified the agenda.

The board and Grieve discussed the difference between Basic Life Support Districts (BLS) and Advanced Life Support Districts (ALS).

Hickey-AuClaire said the committee did want to go forward in updating the maps, at least to get them ready for adoption at some point or for the growth policy for review.

Lapp commented in the new Montana Code Annotated the growth plans needed to assess the gravel resources in their jurisdictions.

Larsen said the issue of gravel resources should be moved to the top of the agenda.

The board discussed briefly what spot the issue of gravel resources should occupy on the agenda and other studies which were planned which might be of interest.

OLD BUSINESS

None.

NEW BUSINESS

Lapp said he had asked the item concerning the Transportation Plan be put on the agenda under new business. He briefed the board on what meetings had been held so far and what the plans of the committee were next concerning goals and policies. He said Peccia and Associates had used up all their money so far and now were working to basically finish the project. The project had run into a whole bunch of snags and in order for them to finish the project, they felt they were probably going to need more money. They thought at the next meeting, they could meet without the Peccia Associates so they did not have to worry about paying for them to come from Helena. They could meet without them and go over specifics and then have a frank

discussion of where they felt they would go on the plan with Peccia. They planned to do this in January.

Larsen said the other thing was they could look at what Peccia came up with concerning goals and policies, and then fax or email them their comments and concerns. It seemed to him they didn't need to keep paying for them to come over here. He said the road advisory committee will meet on January 14, 2010

Pitman said it was difficult because they were dealing with information which was years old and things had changed.

The board discussed how things had changed, options to account for those changes and how things were outdated when they were adopted.

ADJOURNMENT The meeting was adjourned at approximately 8:40 pm. on a motion by Toavs. The next meeting will be held at 6:00 p.m. on January 13, 2010.

Gordon Cross, President

Donna Valade, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/13/10